Supreme Court, U. S.
FILED
MAY 15 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-799

UNITED STATES OF AMERICA,

Petitioner

—v.—

FOSTER LUMBER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED DECEMBER 24, 1974
CERTIORARI GRANTED MARCH 31, 1975

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-799

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

FOSTER LUMBER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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RELEVANT DOCKET ENTRIES U.S. DISTRICT COURT

(W.D. Missouri No. 19701-1)

Date	Filings and Proceedings
Sept. 13, 1971	COMPLAINT—FILED: Writ & 3 copies issued and delivered to the U.S. Marshal. FEE PAID.
Sept. 14, 1971	WRIT showing service on September 13, 1971 —filed. FEE PAID.
Nov. 16, 1971	ANSWER—FILED
Nov. 17, 1971	PRE-TRIAL ORDER No. 1—FILED. (Discovery April 11, 1972) Mailed.
Mar. 27, 1972	NOTICE to Counsel—FILED. Mailed
Apr. 14, 1972	PRE-TRIAL ORDER—Nature of the Case—FILED. (Stipulations: Plaintiff's statement of the Issue; Defendant's statement of the issue; schedule of briefs; Orders of the Court.) Copies distributed.
May 1, 1972	PLAINTIFF'S BRIEF—FILED.
May 24, 1972	BRIEF for the Defendant—FILED.
May 26, 1972	ADDENDUM to Brief for the Defendant—FILED. Submitted.
May 30, 1972	REPLY BRIEF of Plaintiff—FILED. Submitted.
May 7, 1973	MEMORANDUM and ORDER—FILED. (IT IS ORDERED that this memorandum OPINION shall be considered (pursuant to Rule 52, F.R.Cv.P.) as the Court's findings of fact and conclusions of law. Defendant to compute the amount of judgment as outlined herein and submit an order that agreed form of judgment may be entered. JWO) Copies to counsel.

Date	Filings and Proceedings
Jul. 17, 1973	JUDGMENT—FILED. (This cause having been submitted on stipulation, briefs and arguments of counsel in open court, and the Court being fully advised on the issue herein; IT IS ORDERED AND ADJUDGED that the plaintiff have and recover of the defendant the sum of $16,046.70 plus interest thereon at six percent (6%) per annum from July 19, 1968, as allowed by law, and $835.91 plus interest thereon at six percent (6%) per annum from June 30, 1969, as allowed by law, and its costs herein. JWO) Copies to counsel.
Jul. 18, 1973	COST STATEMENT MAILED.
Jul. 24, 1973	BILL OF COSTS ($23.00)—FILED
Sept. 12, 1973	NOTICE OF APPEAL—FILED. Copies sent to printer.

RELEVANT DOCKET ENTRIES U.S. COURT OF APPEALS

(C.A. 8—No. 73-1659)

Date	Filings and Proceedings
Sept. 17, 1973	DOCKETING CASE. Certified copies of Notice of Appeal and Docket entries in U.S. District Court
Sept. 26, 1973	DESIGNATION of Appellant of appendix
Oct. 5, 1973	APPEARANCE for appellant
Oct. 23, 1973	Request of appellant for extension of time to Nov. 26, 1973 to file appendix and brief.
Oct. 24, 1973	ORDER: Aplnt gr to Nov. 26, to file apndx & brf.
Nov. 28, 1973	*Appendix with service.*
Nov. 28, 1973	*Brief appellant* with service.
Nov. 28, 1973	Appearance for appellant.
Dec. 3, 1973	Submitted to screening panel.
Dec. 17, 1973	Transferred to January session.
Dec. 26, 1973	*Brief appellee.*
Dec. 26, 1973	Affidavit of service of brief appellee.
Jan. 7, 1974	REPLY BRIEF OF APPELLANT with service.
Jan. 14, 1974	MOTION of Naegele Advertising Cos. for leave to file brief as amicus curiae
Jan. 15, 1974	ORDER: Naegele Advertising Co. gr lv to file brief amicus curiae; Clerk to file same. Ct. to hear oral arg from amicus only if time relinquished by parties.
Jan. 15, 1974	BRIEF AMICUS CURIAE (*Naegele Advertising Companies, Inc.*) with service Orig. & 4

Date	Filings and Proceedings
Jan. 18, 1974	Arg. and sub. to J. Mehaffy, Lay Ross. (Recorded) Aplnt: Donald H. Olson, Dept. of Justice; Aplee: Robert Vancrum; Concl. Olson.
Jan. 21, 1974	Appearance for appellee.
Jan. 31, 1974	Answer of amicus curiae to Reply to Amicus curiae brief
July 29, 1974	Opinion by J. Mehaffy, Chief Judge. (Pr, Pub)
July 29, 1974	JUDGMENT: Judgment of D. Ct. affirmed.
Aug. 5, 1974	BILL OF COSTS of appellee.
Aug. 21, 1974	Mandate issued.
Aug. 28, 1974	Receipt of Mandate
Jan. 3, 1975	Notice of filing petition for certiorari in Sup. Ct. as 74-799

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

Civil Action File No. 19701-1

[Filed Sep. 13, 1971]

FOSTER LUMBER COMPANY, INC.,
912 E. 63rd St.
Kansas City, Missouri 64111, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

Serve: U.S. District Attorney
Western District of Missouri
811 Grand Avenue
Kansas City, Missouri 64106

Service by Certified Mail:

(1) Attorney-General of the
United States
U.S. Department of Justice
Room 5115
Washington, D.C. 20530

(2) District Director of
Internal Revenue
1114 Market St.
St. Louis, Missouri 63101

COMPLAINT

1. This is an action under the Internal Revenue Code of 1954, Sections 172(b) and 7422(a), for the refund of an overpayment of $16,784.39 paid by Foster Lumber Company as federal income tax for the taxable year ended March 31, 1967. This court has jurisdiction of the action pursuant to Section 1346(a)(1) of Title 28, United States Code.

2. Plaintiff Foster Lumber Company, Inc. (hereinafter "Foster"), a Colorado corporation with its principal office located at 912 East Sixty-Third Street, Kansas City, Missouri, is the successor to Foster Lumber Company (hereinafter "Taxpayer") (formerly a Missouri corporation, liquidated on July 19, 1968) by virtue of having acquire substantially all of the operating assets and liabilities of said Foster Lumber Company under an agreement dated November 22, 1967 (the "Transfer Agreement"). A copy of the Transfer Agreement is attached as Exhibit A and is hereby made a part hereof.

3. Foster brings the present action in its own name as the real party in interest to the present controversy. Taxpayer cannot bring an action for refund since it filed Articles of Dissolution more than two years prior to the commencement of this action and therefore lacks capacity to sue by virtue of Section 351.565 of the Revised Statutes of Missouri. Further, Taxpayer could not have instituted this action within the two year period of Section 351.565, since it did not receive written notice of the disallowance of its claim by the District Director until December 9, 1970, more than two years after the filing of its Articles of Dissolution.

4. Taxpayer kept its books and records and filed its federal income tax returns on the basis of a fiscal year ending March 31. It filed its federal income tax returns for its taxable years ended March 31, 1966, March 31, 1967, and July 19, 1968 (the taxable years here involved), with the District Director of Internal Revenue at St. Louis, Missouri.

5. In its federal income tax return for the year ended July 19, 1968, filed September 11, 1968, Taxpayer reported a net operating loss of $42,203.12, as shown in a copy of its return marked Exhibit B, attached and hereby made a part hereof. Such a net operating loss can be carried back to offset taxable income for the three preceding taxable years pursuant to Section 172, Internal Revenue Code of 1954.

6. Taxpayer had reported taxable income for the year ended March 31, 1966, the taxable year third preceding the taxable year of the net operating loss, of

$172,977.80, of which amount $166,634.81 was the excess of net long-term capital gain over net short-term capital loss and $6,342.99 was ordinary taxable income. Taxpayer had paid the income tax on that amount of taxable income plus a tax imposed by Section 1562(b) of the Internal Revenue Code of 1954 upon members of a controlled group of corporations electing multiple surtax exemptions.

7. On September 11, 1968, in pursuance of its obligations under the Transfer Agreement included herein as Exhibit A, Taxpayer filed an application for tentative refund from carryback of net operating loss—Internal Revenue Service Form 1139, in which it recomputed its tax for the taxable year ended March 31, 1966, taking into consideration the net operating loss carryback deduction from the taxable year ended July 19, 1968.

8. Taxpayer, in recomputing its tax liability on Form 1139 for the taxable year ended March 31, 1966, and the representative of the District Director of Internal Revenue at St. Louis, in his recomputation of the Taxpayer's income tax for the taxable year ended March 31, 1966 (as shown in his examination report dated May 9, 1969, copy of which is attached as Exhibit C and hereby is made a part hereof) calculated Taxpayer's income tax by both the method of computation prescribed in Section 11 of the Internal Revenue Code of 1954 ("the regular method") and the method prescribed in Section 1201(a) of the Internal Revenue Code of 1954 ("the alternative method").

9. The representative of the District Director decreased allowable depreciation expense and hence raised taxable income by $893.06, but otherwise the recomputations by the Taxpayer and the District Director of the Taxpayer's income tax for the taxable year ended March 31, 1966, were the same and therefore the Taxpayer and the District Director agreed upon a recomputation on or about May 29, 1969.

10. Taxpayer's tax for the taxable y ended March 31, 1966, as recomputed by the regular method by the representative of the District Director was $58,200.52, computed as follows (as shown in Exhibit C):

Ordinary tax: 22% x ($173,870.86—$42,203.12)	=	$28,966.91
Surtax: 26% x ($173,870.85—$42,203.12—$25,000)	=	27,733.61
Tax on multiple surtax exemption: 6% x $25,000.00	=	1,500.00
Total Tax:		$58,200.52

The representative of the District Director recomputed the Taxpayer's tax for the taxable year ended March 31, 1966, by the alternative method as follows (as also shown in Exhibit C):

Ordinary tax: 22% x ($7,236.05—$7,236.05)	=	0
Capital gains tax: 25% x $166,634.81	=	$41,658.70
Total Tax:		$41,658.70

Since the alternative method yielded the lower tax, both Taxpayer and the representative of the District Director used that method in determining the Taxpayer's final tax liability for the taxable year ended March 31, 1966.

11. Under the alternative method of computation, only $7,236.05 of the net operating loss deduction arising from the taxable year ended July 19, 1968, was absorbed in offsetting the Taxpayer's ordinary income for the taxable year ended March 31, 1966, leaving an unused net operating loss deduction of $34,967.07 to be carried to and applied against the plaintiff's ordinary taxable income arising in the taxable year ended March 31, 1967, pursuant to Section 172 of the Internal Revenue Code of 1954.

12. Taxpayer had ordinary taxable income for the year ended March 31, 1967, of $114,261.82, as revised by a representative of the District Director in his report prepared on June 4, 1969, a copy of which is attached as Exhibit D and hereby is made a part hereof. Taxpayer's long term capital gain for the year ended March 31, 1967, was $114,655.96, as also shown in Exhibit F. Accepting the computations shown in the report included herein as Exhibit D, Taxpayer agreed to and paid an income tax for the taxable year ended March 31, 1967, of $68,136.45, after allowance of an investment credit of $8,873.22. Taking account of the

unabsorbed net operating loss carryback deduction of $34,967.07, Taxpayer calculated its correct final tax liability for the taxable year ended March 31, 1967, as follows:

Ordinary income tax:		
Normal tax: 22% x ($114,261.82—$34,967.07)	=	$17,444.85
Surtax: 26% x [($114,261.82—$34,967.07) $25,000.00]	=	$14,116.64
Tentative Tax Liability:		$60,235.45
Less: Investment Credit:		8,873.22
Correct Final Tax Liability		$51,352.23

13. The overpayment of tax by Taxpayer for the taxable year ended March 31, 1967, is $16,784.39, which is computed:

Tax paid for year	$68,136.65
Correct Tax Liability after Net Operating Loss Deduction	$51,352.26
Overpayment of Tax	$16,784.39

14. On January 22, 1970, Taxpayer filed its claim for refund with the District Director of Internal Revenue at St. Louis, Missouri, with respect to its taxable year ended March 31, 1967, a copy of which claim is attached as Exhibit E. As that document shows, Taxpayer's claim, based upon *Chartier Real Estate Company, Inc.* v. *Commissioner*, 52 T.C. 346, 356-58 (U.S. Tax Court, 1969), aff'd 428 F.2d 474 (1st Cir. 1970), was that it should be permitted to carry its unused net operating loss deduction of $34,967.07 to the taxable year ended March 31, 1967, and offset it against part of its ordinary taxable income of $114,261.82, thereby yielding an overpayment of $16,784.39 for the taxable year ended March 31, 1967.

15. On or about December 9, 1970, Taxpayer received written notification of the disallowance of its claim for refund of $16,784.39 by the District Director. As that notification, attached as Exhibit F hereof, clearly indicates, the disallowance was solely on the grounds

that the Commissioner does not acquiesce in the holding of the Tax Court of the United States and the First Circuit Court of Appeals in *Chartier Real Estate Company, Inc.* v. *Commissioner*, 52 T.C. 346, 356-58 (1969), aff'd 428 F.2d 474 (1970).

16. Since the District Director cited a nonacquiescence as the grounds for disallowing Taxpayer's claim, it would be futile to seek review of that disallowance by the Appellate Division of the Internal Revenue Service and such review is not a prerequisite to the maintenance of the present action, under Sections 7422(a) and 6532(a)(1), Internal Revenue Code of 1954.

17. Plaintiff Foster is entitled to the refund of the $16,784.39 overpayment of income taxes for the taxable year ending March 31, 1967.

WHEREFORE, plaintiff demands judgment against defendant for the sum of $16,784.39, plus interest at 6% per annum from July 19, 1968, being the end of the taxable year in which the net operating loss arose and thus the date on which the overpayment may be deemed to have been made, and for all costs of this action.

WATSON, ESS, MARSHALL & ENGGAS

/s/ Robert J. Vancrum
Robert J. Vancrum

/s/ John F. Marvin
John F. Marvin
1500 Home Savings Building
1006 Grand Avenue
Kansas City, Mo.
VI 2-3132

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 19701-1

[Filed November 16, 1971]

FOSTER LUMBER COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

ANSWER

The defendant, United States of America, for its Answer to plaintiff's Complaint admits, denies and alleges as follows:

Denies the allegations of such Complaint admitted, qualified or otherwise specifically referred to as follows:

Further answering, the defendant:

1. Admits that this is an action by the plaintiff to recover income taxes paid, but denies that plaintiff has overpaid its income taxes. Admits that jurisdiction, if any, is by virtue of Title 28, U.S.C. Section 1346(a)(1).

2. Admits the allegations contained in paragraph two of the Complaint.

3. Admits the allegations contained in paragraph three of the Complaint.

4. Admits the allegations contained in paragraph four of the Complaint.

5. Denies the allegations contained in paragraph five of the Complaint.

6. Admits the allegations contained in paragraph six of the Complaint, but denies that such reported income reflects an accurate statement of taxpayer's taxable income or tax liability for the taxable year ended March 31, 1966.

7. Presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph seven of the Complaint.

8. Presently lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph eight of the Complaint.

9. Admits the allegations contained in paragraph nine of the Complaint, but denies that such recomputations reflect an accurate statement of taxpayer's taxable income or tax liability for the taxable year ended March 31, 1966.

10. Denies the allegations contained in paragraph ten of the Complaint.

11. Denies the allegations contained in paragarph eleven of the Complaint.

12. Denies the allegations contained in paragraph twelve of the Complaint.

13. Denies the allegations contained in paragraph thirteen of the Complaint.

14. Denies the allegations contained in paragraph fourteen of the Complaint, but admits that the taxpayer filed a claim for refund on or about January 22, 1970, but further denies each and every allegation contained in the referenced claim, Exhibit E, not specifically admitted or qualified elsewhere in this Answer.

15. Admits the allegations contained in the first sentence in paragraph fifteen of the Complaint, but denies the allegations contained in the second sentence in paragraph fifteen of the Complaint.

16. Denies the allegations contained in paragraph sixteen of the Complaint.

17. Denies the allegation contained in paragraph seventeen of the Complaint.

WHEREFORE, the defendant denies that plaintiff is entitled to recover the amount claimed or any amount of money whatsoever, and prays that judgment be entered in favor of the defendant, together with its costs

and such other and further relief as this Court deems to be just and proper.

BERT C. HURN
United States Attorney

By: _____

ROBERT S. MILIGAN
Trial Attorney
Refund Trial Section No. 3
Tax Division
Department of Justice
Washington, D.C. 20530
Telephone (202)-739-3737

[Caption omitted]

STIPULATIONS

The parties hereto stipulate and agree that venue is properly laid in this District; that the United States District Court for the Western District of Missouri, Western Division has jurisdiction of the parties hereto and subject matter hereof, and, that all proper, necessary and indispensable parties are before the Court. The following facts are admitted and require no proof:

1. Plaintiff, Foster Lumber Company, Inc., is a Colorado corporation with its principal office located at 912 East Sixty-Third Street, Kansas City, Missouri.

2. Plaintiff is the successor to Foster Lumber Company (a Missouri corporation, Liquidated on July 19, 1968) by virtue of the plaintiff's acquisition of substantially all the operating assets and liabilities of said Foster Lumber Company (hereafter referred to as the taxpayer) under an agreement dated November 22, 1967, in exchange solely for plaintiff's voting stock.

3. Taxpayer kept its books and records and filed its federal income tax returns on the basis of a fiscal year ending March 31.

4. Taxpayer timely filed its U.S. Corporation Income Tax Returns (Forms 1120) for its fiscal years ending March 31, 1966, March 31, 1967 and July 19, 1968, with the District Director of Internal Revenue, St. Louis, Missouri, and paid the amount of tax shown due on the returns.

5. Taxpayer realized taxable income for its fiscal year ending March 31, 1966 of $173,870.86, of which $7,236.05 was ordinary income and the remaining $166,634.81 was net long-term capital gain.

6. Taxpayer realized taxable income for its fiscal year ending March 31, 1967 of $228,917.73, of which $114,-261.82 was ordinary income and the remaining $114,-655.96 was net long-term capital gain.

7. Taxpayer suffered and reported a net operating loss of $42,203.12 for the fiscal year ending July 19, 1968.

8. Taxpayer filed a Corporation Application For Tentative Refund From Carryback of Net Operating Loss (Form 1139) on September 11, 1968, in which taxpayer recomputed its tax for its taxable year ending March 31, 1966, taking into consideration the net operating loss carryback from its taxable year ending July 19, 1968.

9. The taxpayer's federal income tax liability for its fiscal year ending March 31, 1966, as computed under the regular method as provided under Section 11 of the Internal Revenue Code of 1954, was $58,200.52, computed as follows:

Ordinary tax: 22% x ($173,870.86—net operating loss carryback of $42,203.12)	=	$28,966.91
Surtax: 26% x ($173,870.86 [1]—$42,203.12—$25,000	=	27,733.61
Tax on multiple surtax exemption: 6% x $25,000	=	1,500.00
Total tax:		$58,200.52

10. The taxpayer's federal income tax liability for its fiscal year ending March 31, 1966, as computed under the alternative method as provided under Sections 11 and 1201 of the Internal Revenue Code of 1954, was $41,658.70, computed as follows:

Ordinary tax: 22% x ($7,236.05—net operating loss carryback of $7,236.05)	=	—0—
Capital gains tax: 25% x $166,634.81	=	$41,658.70
Total tax:		$41,658.70

(The alternative method, as provided under Sections 11 and 1201 of the Code, was used in computing the taxpayer's tax liability for the fiscal year ended March 31, 1966.)

11. The taxpayer's federal income tax liability for its fiscal year ending March 31, 1967, as determined by the Internal Revenue Service, was $68,136.45, computed as follows:

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[1] In the original stipulation of facts, and in the record below, this figure appears erroneously as $173,879.86, as counsel for both parties agree.

Ordinary tax: 48% x ($114,261.82—no net operating loss deduction)—$6500	=	$48,345.68
Capital gains tax: 25% x $114,853.96	=	28,663.99
Less: Investment credit		8,873.22
Total tax:		$68,136.45

(The taxpayer paid income tax in the amount of $68,-136.45, for the fiscal year ending March 31, 1967, $67,-300.74 was paid in accordance with its tax return and $835.91 was paid pursuant to a deficiency assessment.)

12. The taxpayer's federal income tax liability for its fiscal year ending March 31, 1967, as alleged by the plaintiff, was $51,352.28, computed as follows:

Ordinary tax: 22% [2] x ($114,261.82 [3]—net operating loss carryback of $34,967.07)	=	$17,444.85
Surtax: 26% x [($114,261.82—$34,967.07)—25,000]		14,116.64
Capital gains tax: 25% x $114,655.96	=	28,663.99
		$60,225.48
Less: Investment credit		8,873.22
Total tax:		51,352.26

13. Taxpayer timely filed its Claim for refund (Form 843) with the Internal Revenue Service for its taxable year ending March 31, 1967 on January 22, 1970, claiming an overpayment of income tax in the amount of $16,784.39, computed as follows:

Tax paid	$68,136.65
(minus) Alleged correct tax liability	51,352.26
Alleged overpayment	$16,784.39

14. On or about December 9, 1970, the Internal Revenue Service disallowed taxpayer's Claim for refund.

15. This suit was timely instituted on September 11, 1971.

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[2] In the original stipulation of facts and in the record below this figure appears erroneously as 23%, as counsel for both parties agree.

[3] In the Appendix to the Petition for Certiorari this figure appears erroneously as $114,261.32 (Pet. App. 6a.).

NOTATION RE MEMORANDUM AND ORDER OF DISTRICT COURT

The Memorandum and Order of the District Court is printed in the Petition for Certiorari, and may be found therein at pages 1a-3a of Appendix A. It is therefore not reprinted in this Appendix.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil No. 19701-1

[Filed Jul. 17, 1973]

FOSTER LUMBER COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

JUDGMENT

This action having been submitted to the Court on the basis of a stipulation, and certain attachments thereto, plus the briefs and arguments of counsel in open Court, and this Court being fully advised of the issue herein, and having found for the plaintiff thereon, it is hereby,

ORDERED and ADJUDGED that plaintiff shall have of and recover from the defendant the sum of $16,046.70 plus interest thereon at six percent (6%) per annum from July 10, 1968, as allowed by law, and $835.91 plus interest thereon at six percent (6%) per annum from June 30, 1969, as allowed by law, and its costs herein.

/s/ [Illegible]
United States District Judge

Approved as to Form:

/s/ Robert Vancrum
ROBERT VANCRUM
Counsel for Plaintiff

/s/ Douglas G. Anderson
DOUGLAS G. ANDERSON
Counsel for Defendant

/s/ [Illegible]
Assistant U.S. Attorney
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil No. 19701-1

[Filed Sep. 12, 1973]

FOSTER LUMBER COMPANY, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

NOTICE OF APPEAL

Notice is hereby given that the United States of America, defendant, hereby appeals to the United States Court of Appeals For The Eighth Circuit from the final judgment entered in this cause on July 17, 1973.

BERT C. HURN
United States Attorney

by /s/ Mary A. Senner
MARY A. SENNER
Asst. United States Attorney

I hereby certify that a copy of the foregoing was mailed to Robert J. Vancrum, Attorney at Law, WATSON, ESS, MARSHALL & ENGGAS, 1006 Grand Avenue, Kansas City, Missouri 64106, this 12th day of September, 1973.

/s/ Mary A. Senner
MARY A. SENNER
Assistant United States Attorney

NOTATION RE OPINION OF COURT OF APPEALS

The Opinion of the Court of Appeals is printed in the Petition for Certiorari, and may be found therein at pages 8a-14a of Appendix B. It is therefore not reprinted in this Appendix.

NOTATION RE JUDGMENT OF COURT OF APPEALS

The Judgment of the Court of Appeals is printed in the Petition for Certiorari, and may be found therein at pages 15a-16a of Appendix C. It is therefore not reprinted in this Appendix.

SUPREME COURT OF THE UNITED STATES

No. 74-799

UNITED STATES, PETITIONER

v.

FOSTER LUMBER COMPANY, INC.

ORDER ALLOWING CERTIORARI—Filed March 31, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 573265 142